

**Franchise Tax Board****ANALYSIS OF ORIGINAL BILL**

Author: Ridley-Thomas Analyst: Jennifer Bettencourt Bill Number: SB 870  
Related Bills: None Telephone: 845-5163 Introduced Date: February 23, 2007  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** State Employment/Adverse Actions Against Excluded Employees Must Commence Within One Year Of Cause For Discipline

**SUMMARY**

This bill would shorten the time to serve an adverse action against excluded state employees from three years to one.

**PURPOSE OF THE BILL**

According to the author's office, the purpose of this bill is to provide timely resolutions to adverse actions taken against state employees.

**EFFECTIVE/OPERATIVE DATE**

This bill would be effective and operative January 1, 2008, and would apply to any misconduct by excluded employees that occurs after that date.

**Summary of Suggested Amendments**

Amendment 1 provides language to fund the department's costs.

**POSITION**

Pending.

**ANALYSIS**STATE LAW

The California Civil Service Act within the Government Code establishes procedures for taking disciplinary actions, called adverse actions, by the State Personnel Board. The Act provides a statute of limitations of three years to serve an adverse action on state employees. If the action is not served within three years after the cause for discipline, the action is deemed invalid. In a case where the adverse action is due to fraud, embezzlement, or falsification of records, the notice of adverse action must be served within three years after the discovery of the misconduct. Adverse actions served within the statute of limitations can result in dismissal, demotion, or reassignment.

## Board Position:

_____ S	_____ NA	_____ NP
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_____ N	_____ OUA	_____ <input checked="" type="checkbox"/> PENDING

Department Director

Date

Lynett Iwafuchi  
for Selvi Stanislaus

6/29/07

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony. If the unauthorized disclosure involves the use of a state computer, it may be prosecuted as a felony. In addition, FTB may take disciplinary action.

### THIS BILL

This bill would shorten the statute of limitations from three years to one year in which to serve an adverse action on an excluded state employee. Notice of an adverse action in most instances would need to be served on the excluded employee within one year from the occurrence of the cause for discipline. In the case of an adverse action based on fraud, embezzlement, or the falsification of records, this bill would require the notice of adverse action to be served within one year from the date of discovery of the misconduct.

An excluded employee would be defined by reference to Government Code section 3527. "Excluded employee," as defined by the Government Code, means all managerial employees, confidential employees, and supervisory employees, and all civil service employees of the Department of Personnel Administration, the Legislative Counsel, the Bureau of State Audits, the Public Employment Relations Board, the Department of Industrial Relations, the State Athletic Commission, and certain employees of the State Controller's office.

### **PROGRAM BACKGROUND**

As part of its efforts to assure that confidential taxpayer information is secure, FTB serves adverse actions for unauthorized access to confidential taxpayer information as necessary. Confidential taxpayer information received by FTB is regulated under the Information Practices Act, the Public Records Act, the Revenue and Taxation Code, and federal laws, all of which protect the privacy of an individual's information. To that end, the department conducts periodic systems audits to identify instances of inappropriate or unauthorized access to confidential taxpayer information and employee information. Frequently the technique used to identify an inappropriate access is an analysis that discovers a pattern of inappropriate access, such as multiple accesses of the same taxpayer's account or access of multiple taxpayers living on the same block. Such audits may reveal a pattern of inappropriate accesses that occurred over a period of years or related misconduct such as identity theft or misuse of taxpayer information. It is common for these unauthorized accesses to span a period greater than one year. These audits contribute to protecting the confidentiality and integrity of the department's information systems, networks, and data. In general, an adverse action for inappropriate access results in actions ranging from suspension to dismissal.

## **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

A one year statute of limitations to serve an adverse action for unauthorized accesses would weaken the department's ability to use disciplinary action as a deterrent for violating the department's unauthorized access policies. The shortened statute would limit the cases the department develops to acts that occurred during the most recent year; however, some occurrences of unauthorized access take longer than one year from the employee's first inappropriate access to discover. Allowing unauthorized accesses to escape discipline due to a shortened statute of limitations would also weaken privacy protection for taxpayers' confidential information.

## **OTHER STATES' INFORMATION**

A comparison with other states would not be meaningful as this bill pertains to administrative procedures that are specific to California.

## **FISCAL IMPACT**

The department would need to enhance its audit systems used to identify instances of inappropriate access of confidential taxpayer information and additional resources to analyze data collected to decrease the time it presently takes to uncover patterns of unauthorized accesses. These costs are estimated at \$467,445:

- \$220,000 to enhance the current audit system
- \$247,445 for 2.5 personnel years

Annual on-going costs for system maintenance and 2 personnel years are estimated at \$245,000.

It is recommended that the bill be amended to include appropriation language that would provide funding to implement this bill. Lack of an appropriation will require the department to secure the funding through the normal budgetary process, which will delay implementation of this bill.

## **ECONOMIC IMPACT**

This bill would have no impact on state income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

Jennifer Bettencourt  
Franchise Tax Board  
(916) 845-5163  
[jennifer.bettencourt@ftb.ca.gov](mailto:jennifer.bettencourt@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
(916) 845-6333  
[brian.putler@ftb.ca.gov](mailto:brian.putler@ftb.ca.gov)

Analyst	Jennifer
	Bettencourt
Telephone #	845-5163
Attorney	Tommy Leung

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO SB 870  
As Introduced February 23, 2007

AMENDMENT 1

The sum of four hundred and sixty eight thousand dollars (\$468,000) is hereby appropriated to the Franchise Tax Board in augmentation of item 1730-001-0001 of the Governor's Budget, Chapter XX, Statutes of XXXX.